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Attorney for Plaintiff:
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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA – OAKLAND

NEIL A. JENSEN)	CASE NO.
)	
Plaintiff,)	
)	COMPLAINANT FOR DAMAGES
vs.)	
)	Federal Railroad Safety Act: 49
BNSF RAILWAY COMPANY)	U.S.C. § 20109 – Whistleblower
)	
Defendant.)	

Plaintiff NEIL A. JENSEN, by this complaint, complains of Defendant BNSF RAILWAY COMPANY, a corporation, and alleges as follows:

FIRST CAUSE OF ACTION
Federal Railroad Safety Act – 49 U.S.C. Section 20109 (Whistleblower)

1

That this complaint is brought under and by virtue of the provisions of the Federal Rail Safety Act, 49 USC Sections 20109 *et seq.* and regulations promulgated by the Federal Railway Administration pursuant thereto.

2

That this Court has subject matter jurisdiction in this case pursuant to the Federal Railroad Safety Act (“FRSA”), 49 U.S.C. Section 20109(d)(3), regardless of the amount in controversy.

1

3

The Plaintiff, NEIL A. JENSEN ("JENSEN"), is of Clovis, California.

4

That at all times herein mentioned, defendant, BNSF RAILWAY COMPANY ("BNSF") was subject to the above mentioned statutes and regulations and that BNSF was and is a carrier engaged in interstate commerce.

5

That at all times herein mentioned, BNSF was and is a railroad carrier providing railroad freight transportation within Alameda and Contra Costa Counties, owning railroad tracks within Alameda and Contra Costa Counties, owning and/or operating rail yards in said counties, and maintaining an office in Richmond, California.

6

That this Court is the proper venue since this Complaint may be brought in the "appropriate district court of the United States," pursuant to 49 U.S.C. § 20109(d)(3), which includes any District in which defendant BNSF performs business, and as described herein, BNSF's business within Alameda and Contra Costa Counties establishes minimum contacts with said counties, thereby subjecting BNSF to personal jurisdiction within this Northern District.

7

That at the time of the defendant's FRSA violations, BNSF was employed by the defendant as a trainman, and qualified as an employee within the meaning of 49 U.S.C. § 20109.

8

That on or about April 25, 2003, JENSEN, in BNSF's Fresno, California yard in Fresno County, engaged in protected activities under the FRSA when he reported, in good faith, an on-duty injury.

9

That beginning on or about July 30, 2009, JENSEN's treating physician first prescribed a treatment plan (hereinafter "TREATMENT PLAN") for JENSEN's on-duty injury which stated

2

1 that JENSEN may need to miss work three to eight days per month, based on need, in order to rest
2 his injured wrist, for the remainder of his employment at BNSF.

3 10

4 That BNSF had repeated notice of this TREATMENT PLAN after it was first
5 prescribed, including July 30, 2009, during trial in October 2010, and during the disciplinary
6 investigations held on February 15, 2011, March 30, 2011, July 19, 2011, September 28, 2011, and
7 February 21, 2012.

8 11

9 That during the months of October 2010, November 2010, and December 2010,
10 JENSEN engaged in the protected activities of following his doctor's TREATMENT PLAN by
11 missing work in order to rest his wrist that was injured on-duty on April 25, 2003, and following
12 another doctor's separate treatment plan and/or orders by missing work due to a separate illness.

13 12

14 That BNSF took adverse or unfavorable actions against JENSEN in whole or in part
15 due to JENSEN's protected activities he engaged in during October 2010, November 2010, and
16 December 2010, as described in Paragraph 11 hereinabove, when BNSF charged JENSEN with
17 company rules violations in connection therewith on January 12, 2011, held an investigation
18 hearing regarding said charged rules violations on February 15, 2011, and issued discipline of a
19 Formal Reprimand against JENSEN on March 11, 2011. In so doing, BNSF acted with reckless
20 disregard for the law and with complete indifference to JENSEN's rights under the FRSA.

21 13

22 That BNSF had repeated notice of the TREATMENT PLAN and another doctor's
23 separate treatment plan and/or orders for JENSEN's illness, both of which are described above in
24 Paragraph 11, before, during, and/or after October 2010, November 2010, and December 2010,
25 when it charged JENSEN with company rules violations in connection therewith on January 12,
26 2011, held an investigation hearing regarding said charged rules violations on February 15, 2011,
27 and issued discipline of a Formal Reprimand against JENSEN on March 11, 2011.

28 ///

3

14

That during the months of December 2010, January 2011, and February 2011, JENSEN engaged in the protected activities of following his doctor's TREATMENT PLAN by missing work in order to rest his wrist that was injured on-duty on April 25, 2003, and following another doctor's separate treatment plan and/or orders by missing work due to a separate illness.

15

That BNSF took adverse or unfavorable actions against JENSEN in whole or in part due to JENSEN's protected activities he engaged in during December 2010, January 2011, and February 2011, as described in Paragraph 14 hereinabove, when BNSF charged JENSEN with company rules violations in connection therewith on March 9, 2011, held an investigation hearing regarding said charged rules violations on March 30, 2011, and issued discipline of a 10 Day Record Suspension against JENSEN on April 14, 2011. In so doing, BNSF acted with reckless disregard for the law and with complete indifference to JENSEN's rights under the FRSA.

16

That BNSF had repeated notice of the aforementioned TREATMENT PLAN and another doctor's separate treatment plan and/or orders for JENSEN's illness, both of which are described in Paragraph 14 hereinabove, before, during, and/or after December 2010, January 2011, and February 2011, when it charged JENSEN with company rules violations in connection therewith on March 9, 2011, held an investigation hearing regarding said charged rules violations on March 30, 2011, and issued discipline of a 10 Day Record Suspension against JENSEN on April 14, 2011.

17

That during the months of April 2011, May 2011, and June 2011, JENSEN engaged in the protected activity of following his doctor's TREATMENT PLAN by missing work in order to rest his wrist that was injured on-duty on April 25, 2003.

18

That BNSF took adverse or unfavorable actions against JENSEN in whole or in part due to JENSEN's protected activities he engaged in during April 2011, May 2011, and June 2011,

4

1 when BNSF charged JENSEN with company rules violations in connection therewith on July 11,
2 2011, held an investigation hearing regarding said charged rules violations on July 19, 2011, and
3 issued discipline of a 20 Day Record Suspension against JENSEN on August 5, 2011. In so doing,
4 BNSF acted with reckless disregard for the law and with complete indifference to JENSEN's rights
5 under the FRSA.

6 19

7 That BNSF had repeated notice of the aforementioned TREATMENT PLAN, before,
8 during, and/or after April 2011, May 2011, and June 2011, when it charged JENSEN with
9 company rules violations in connection therewith on July 11, 2011, held an investigation hearing
10 regarding said charged rules violations on July 19, 2011, and issued discipline of a 20 Day Record
11 Suspension against JENSEN on August 5, 2011.

12 20

13 That during the months of June 2011, July 2011, and August 2011, JENSEN engaged in
14 the protected activity of following his doctor's TREATMENT PLAN by missing work in order to
15 rest his wrist that was injured on-duty on April 25, 2003, and following another doctor's separate
16 treatment plan and/or orders by missing work due to JENSEN's other medical reasons.

17 21

18 That BNSF took adverse or unfavorable actions against JENSEN in whole or in part
19 due to JENSEN's protected activities he engaged in during June 2011, July 2011, and August
20 2011, as described in paragraph 20 hereinabove, when BNSF charged JENSEN with company
21 rules violations in connection therewith on September 14, 2011, held an investigation hearing
22 regarding said charged rules violations on September 28, 2011, and issued discipline of a 20 Day
23 Record Suspension and One Year Review Period against JENSEN on October 26, 2011. In so
24 doing, BNSF acted with reckless disregard for the law and with complete indifference to
25 JENSEN's rights under the FRSA.

26 22

27 That BNSF had repeated notice of the aforementioned TREATMENT PLAN and
28 another doctor's separate treatment plan and/or orders regarding JENSEN's other medical reasons,

5

both of which are described in Paragraph 20 hereinabove, before, during and/or after June 2011, July 2011, and August 2011, when it charged JENSEN with company rules violations in connection therewith on September 14, 2011, held an investigation hearing regarding said charged rules violations on September 28, 2011, and issued discipline of a 20 Day Record Suspension and One Year Review Period against JENSEN on October 26, 2011.

23

That during the months of November 2011, December 2011, and January 2012, JENSEN engaged in the protected activity of following his doctor's TREATMENT PLAN by missing work in order to rest his wrist that was injured on-duty on April 25, 2003, and following another doctor's separate treatment plan and/or orders by missing work due JENSEN's illness.

24

That BNSF took adverse or unfavorable actions against JENSEN in whole or in part due to JENSEN's protected activities he engaged in during November 2011, December 2011, and January 2012, as described in Paragraph 23 hereinabove, when BNSF charged JENSEN with company rules violations in connection therewith on February 9, 2012, held an investigation hearing regarding said charged rules violations on February 21, 2012, and terminated JENSEN on March 19, 2012. In so doing, BNSF acted with reckless disregard for the law and with complete indifference to JENSEN's rights under the FRSA.

25

That BNSF had repeated notice of the aforementioned TREATMENT PLAN and another doctor's separate treatment plan and/or orders for JENSEN's illness, both of which are described in Paragraph 23 hereinabove, before, during, and/or after November 2011, December 2011, and January 2012, when it charged JENSEN with company rules violations in connection therewith on February 9, 2012, held an investigation hearing regarding said charged rules violations on February 21, 2012, and terminated JENSEN on March 19, 2012.

26

On September 5, 2011, the Plaintiff filed a FRSA Complaint with the Secretary of Labor's Region 9 OSHA Whistleblower Office (Complaint and Email sending Complaint to

6

OSHA are attached hereto as **Exhibit 1**), and continued to notify said OSHA Office about the additional adverse actions herein described, including but not limited to notifying said OSHA Office on March 23, 2012 of Plaintiff's termination. Plaintiff's action was therefore filed within the applicable 180 days from the date the plaintiff became aware of BNSF's intent to take the aforementioned adverse or unfavorable personnel actions against him.

27

The Region 9 OSHA Whistleblower Office commenced its investigation, and the Plaintiff fully cooperated with OSHA's investigation. However, OSHA did not issue a final decision within 210 days after the filing of the FRSA Complaint. The delay was not due to any bad faith on the part of the Plaintiff.

28

Pursuant to Section (d)(3) of the FRSA, the Plaintiff has a statutory right to bring an original action in a United States district court for a jury trial regarding the Railroad's violations of the FRSA. 49 U.S.C. Section 20109(d)(3). On November 22, 2013, the Plaintiff filed with the US Department of Labor a Notice of Intent to File Original Action (attached hereto as **Exhibit 2**).

29

Pursuant to FRSA 49 U.S.C. Section 20109(d)(3), the plaintiff now is bringing this original action at law and equity for de novo review by the United States District Court, Eastern District – Oakland, which Court has jurisdiction over this FRSA action without regard to the amount in controversy.

WHEREFORE, in order to encourage employees to freely report all injuries and safety concerns without fear of any retaliation, thereby ensuring the Federal Rail Administration has the necessary information to develop and administer an effective rail safety regulatory program that promotes safety in every area of our nation's railroad operations, the Plaintiff demands a Judgment under the FRSA for all relief necessary to make him whole, according to proof, including but not limited to: reinstatement, expungement of all references to disciplinary action related to the the aforementioned disciplinary incidents; lost benefits with interest; lost wages with interest; compensatory damages for economic losses due to defendant's conduct; compensatory damages

7

1 for mental anguish and emotional distress due to defendant's conduct; the statutory maximum of
2 punitive damages; for all relief available pursuant to the FRSA, and special damages for all
3 litigation costs including expert witness fees and attorney fees.

4 DATED: December 23, 2013

HILDEBRAND, McLEOD & NELSON, INC.

5
6 By: 

RYAN J. OTIS
Attorney for Plaintiff
NEIL A. JENSEN

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EXHIBIT 1

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9 Attorney for Complainant
 10 NEIL A. JENSEN

11 UNITED STATES DEPARTMENT OF LABOR DIVISION OF
 12 OCCUPATIONAL SAFETY AND HEALTH ADMINISTRATION
 13 SAN FRANCISCO, CALIFORNIA

14 NEIL A. JENSEN

CASE NO.

15 Complainant,

16 vs.

17 BNSF RAILWAY COMPANY

18 Respondent.

19 COMPLAINT TO THE UNITED
 20 STATES DEPARTMENT OF
 21 LABOR, OCCUPATIONAL
 22 HEALTH AND SAFETY DIVISION,
 23 FOR DAMAGES PURSUANT TO 49
 24 USC §§ 20109 ET SEQ.

25 Complainant NEIL A. JENSEN ("JENSEN"), complains against the Respondent BNSF
 26 RAILWAY COMPANY ("BNSF"), and alleges as follows:

1

27 That this complaint is brought under and by virtue of the provisions of the Federal Rail
 28 Safety Act, 49 USC § 20109 *et seq.* and regulations promulgated by the Federal Railway
 Administration pursuant thereto.

2

29 That at all relevant times the facts and circumstances of this complaint arose while
 30 BNSF was subject to the above mentioned statutes and regulations and that JENSEN was
 31 employed as a conductor by BNSF and that BNSF was and is a carrier engaged in interstate
 32 commerce and subject to the aforesaid federal statutes and regulations relating to retaliation and
 33 harassment.

1

Complaint to the United States Department Of Labor – Occupational Health And Safety Division –
 Pursuant To 49 USC §§ 20109 *Et Seq.*

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3

This complaint satisfies the statute of limitations requirement under 49 USC § 20109(d)(2)(A)(ii) since it is being filed 180 days from the earliest date of discrimination and harassment on March 9, 2011.

4

That on or about April 2003 JENSEN suffered an on-duty injury to his wrist and hand which resulted in four surgeries to his wrist, including a partial fusion. JENSEN filed a lawsuit in San Joaquin County against BNSF under the Federal Employer's Liability Act ("FELA") which went to trial in November 2010 and reached a substantial verdict against BNSF.

5

During trial, JENSEN's treating physician Dr. Randi Galli testified in front of BNSF attorneys, at least one BNSF manager, and at least one BNSF claims representative, that due to JENSEN's extensive injuries and treatment, JENSEN requires 3 to 8 days off per month in order to rest his and maintain his injured wrist. Dr. Galli has also written such information in a prescription note that has been provided to BNSF.

6

In earlier 2010 prior to trial, JENSEN was diagnosed with cancer and missed work time due to the treatment of that condition under the Family and Medical Leave Act ("FMLA"). JENSEN used up all his available FMLA time for this condition for a twelve month period.

7

JENSEN returned to work in mid-November, on or about November 16, 2010. He had missed work in October 2010 and the first part of November under an excused absence.

8

Once returning to work in November 2010, JENSEN missed four days of work, 2 weekdays and 2 weekends, in order to rest and maintain his injured wrist, as prescribed by Dr. Galli's treatment plan.

///

///

2

9

In December 2010, JENSEN allegedly missed 14 days, 11 weekdays and 3 weekend days. JENSEN believes he missed approximately 2 days in this month due to his wrist injury, as prescribed by Dr. Galli's treatment plan. JENSEN missed 9 days during this month due to severe illness, which was part of another physician's treatment plan and required time off as well as prescription medication; this time was excused by signed medical notes provided to BNSF.

10

In January 2011, BNSF claims JENSEN missed approximately 11 days of work. These missed days were due to illness and again, were part of JENSEN's physician's treatment plan as shown by his signed medical excuse notes which were provided to BNSF.

11

In February 2011, JENSEN believes he missed four work days which were solely attributable to his wrist injury and part of Dr. Galli's prescribed treatment as mentioned above.

12

On or about March 11, 2011, BNSF issued a Formal Reprimand for JENSEN's alleged violation of BNSF's attendance policy during the months of October, November, and December 2010. The investigation hearing was held on February 15, 2011 during which time JENSEN provided BNSF with sufficient evidence that he did not violate the BNSF attendance policy:

A. BNSF manager Darrell Kitchen acknowledged that October 2010 was an excused month regarding JENSEN's attendance guidelines and would not count against JENSEN.

B. According to BNSF's attendance guidelines, in the month of November, 2010 JENSEN was allowed to have 2.5 weekdays off and 1 weekend day off.

C. BNSF claimed in the investigation that JENSEN violated its attendance guidelines since JENSEN missed 2 weekdays and 2 weekend days.

D. However, JENSEN provided evidence that his time off in November 2010, as shown above in Paragraph 8 was due solely to his medical treatment plan for his wrist injury as prescribed by his treating hand surgeon, Dr. Randi Galli.

3

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1 E. In December 2010, BNSF claimed that according to its guidelines, JENSEN was
 2 allowed 4.75 weekdays off and 2 weekend days off but that JENSEN missed 11
 3 weekdays and 3 weekend days, thereby violating its attendance guidelines.

4 F. As stated above in Paragraph 9, JENSEN showed that 2 of his days off were
 5 directly attributable to his wrist injury treatment plan while 9 were due to his
 6 treatment plan for his illness. Taking these excusable days out of the calculation
 7 leaves a total of three days off which fits within BNSF's alleged attendance
 8 guidelines.

9 The evidence listed herein shows that JENSEN's missed days in November and
 10 December were due to JENSEN following his treatment plans regarding his wrist and illness
 11 which should have been excused absences which do not adversely affect JENSEN's attendance. In
 12 sum, JENSEN showed that he did not violated BNSF's attendance guidelines.

13 13

14 On or about March 9, 2011, BNSF issued a notice of investigation regarding JENSEN's
 15 alleged violations of BNSF's attendance guidelines for the months of December, 2011, January,
 16 2011 and February, 2011. On or about March 30, 2011, BNSF held an investigation hearing at
 17 which time BNSF again charged that JENSEN's missed time violated BNSF's attendance
 18 guidelines. As with JENSEN's February 15, 2011 investigation, JENSEN proved that his missed
 19 days were due to him following his doctors' treatment plans:

20 A. Despite being charged for violating BNSF's attendance guidelines for December
 21 2010 in the February 15, 2011 investigation, BNSF again charged JENSEN for
 22 alleged violations in the same month. As done previously, JENSEN offered
 23 evidence that his 11 of his 14 missed days were attributable to his following
 24 medical treatment plans, as described in Paragraphs 9 and 12(E).

25 B. For January, 2011, BNSF claimed that JENSEN missed approximately 11 days
 26 when he was supposedly allowed only 1 day off, thus violating its attendance
 27 guidelines.

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1 C. For this same January period, JENSEN offered medical excuse notes signed by his
2 doctors that JENSEN was sick and could not work, therefore showing that
3 JENSEN's missed work was due to following his doctor's treatment plan for his
4 aforementioned illness described in Paragraphs 9 and 10.

5 D. For February 2011, BNSF claimed that JENSEN missed approximately 4 days
6 when he was allowed to miss only 1, thereby allegedly violating its attendance
7 guidelines.

8 E. In his defense, JENSEN again offered evidence that his four missed days were due
9 to his wrist injury and that he was following Dr. Galli's aforementioned treatment
10 plan of missing 3 to 8 days per month.

11 These facts show that JENSEN's missed days in December 2010, January, 2011, and
12 February, 2011 were due to him following his medical treatment plans for his wrist and illness and
13 exonerating him from any claimed attendance policy violations.

14 14

15 Despite JENSEN's evidence excusing his absences for the December 2010 through
16 February 2011 period, BNSF issued JENSEN a 10-day record suspension on April 14, 2011.

17 15

18 BNSF continues to issue JENSEN notices of investigation regarding his alleged
19 attendance guideline violations. On May 11, 2011 BNSF issued a charge letter regarding
20 JENSEN's alleged violation of BNSF's attendance guidelines during February, March and April
21 2011, and requiring an investigation hearing on May 24,, 2011. On July 11, 2011 BNSF issued
22 another letter to JENSEN for his alleged violation of BNSF's attendance guidelines during April,
23 May, and June 2011, and requiring JENSEN to attend a formal investigation hearing on July 19,
24 2011.

25 16

26 JENSEN has engaged in the protected activity of following a treatment plan for his
27 wrist injury and illness in the months of November, 2010 through February, 2011 as defined by 49
28 U.S.C. § 20109(c)(2).

5

17

JENSEN has also engaged in the protected activity of notifying BNSF of a work related injury, as defined by 49 U.S.C. § 20109(a)(4), since he continually notifies BNSF that he suffered injury and is treating for such a condition.

18

BNSF has engaged in the following adverse actions as defined by 49 U.S.C. § 20109(c)(2):

- A. Bringing charges against JENSEN on March 9, 2011;
- B. Issuing JENSEN a Formal Reprimand on March 11, 2011;
- C. Engaging in an Investigation Hearing on March 30, 2011;
- D. Issuing JENSEN a 10 Day Record Suspension on April 14, 2011.
- E. Bringing charges against JENSEN on May 11, 2011, and July 11, 2011

19

BNSF's adverse actions listed in Paragraph 18 have violated 49 U.S.C. § 20109(c)(2) since, as discussed above, JENSEN's missed days were due to him following his doctors' treatment plans for his illness and wrist injury yet BNSF instituted charges against JENSEN, reprimanded him, and disciplined him for missing these days. It was only in December, 2010 that JENSEN's excusable days allegedly were not completely for his treatment plans, but his remaining 3 missed days were within the excusable amount. Furthermore, BNSF's charge letter from May 2011 includes an allegation that JENSEN violated the attendance guidelines in February 2011 which as discussed in Paragraphs 11 and 13(E), were missed solely to JENSEN's medical treatment plan for his wrist injury. It is also believed that JENSEN's absences since February 2011 continue to be, at least in part or in whole, due to him following his treatment plan prescribed by Dr. Galli for JENSEN's wrist injury which therefore encompass the May and July 2011 charges.

20

BNSF has continued to violated 49 U.S.C. § 20109(c)(2) because it disciplined JENSEN twice regarding his attendance for the same month: December 2010.

6

1 ///

2 21

3 BNSF's attendance guidelines is not a rigid and unmovable standard but nonetheless
 4 BNSF still chose to discipline JENSEN in violation of 49 U.S.C. §20109(c)(2). BNSF's own
 5 attendance policy provides that BNSF managers should never act in a rigid manner for
 6 determining supposed attendance violations: "Local member of the BNSF transportation
 7 management team are specifically empowered to apply these Guidelines considering all relevant
 8 information. Managers should never act in a rigid or wooden manner, and in every case should
 9 use common sense." Despite this provision, and JENSEN's medically excused absences, BNSF
 10 still chose to discipline JENSEN numerous times.

11 22

12 BNSF's actions above are evidence of retaliation and harassment in violation of 49
 13 U.S.C. § 20109(a)(4) because JENSEN repeatedly notified BNSF of his on-duty injury and BNSF
 14 still is disciplining and harassing him regarding his on-duty injury for which he continually
 15 notifies BNSF.

16 23

17 Claimant believes he was disciplined and harassed for reporting an on-duty injury and
 18 following his treatment plan due because BNSF is attempting to retaliate against and discipline
 19 JENSEN for his successful FELA injury lawsuit in a potential attempt to discourage other
 20 employees from filing FELA lawsuits and/or returning to service following said lawsuit. Claimant
 21 believes these are the motivating factors for BNSF to discriminate against and discipline Claimant.

22 24

23 At this time, Claimant has not suffered lost wages, lost benefits, or a loss of earning
 24 capacity as a direct result of BNSF's above described violations of law. However, given BNSF's
 25 series of charge letters and upcoming investigations Claimant may suffer lost wages, benefits, or
 26 earning capacity in the future as well as additional discipline, harassment, intimidation, and
 27 retaliation.

28 ///

7

1 ///

2 25

3 As a further direct and legal result of BNSF's above described tortious wrongful
 4 conduct, Claimant has suffered, and believes he will continue to suffer, humiliation, anxiety,
 5 mental anguish and emotional distress all to his damage and to be established according to proof.

6 26

7 The above described wrongful conduct of the BNSF was done with malice, fraud, and
 8 oppression and reckless disregard of Claimant's right to follow his treatment plan and report an
 9 "on-duty" injury in good faith to BNSF's managers and directors. BNSF has ratified and adopted
 10 the wrongful conduct of its supervisors and directors in discriminating and retaliating against
 11 Claimant.

12 WHEREFORE, Claimant prays for judgment against BNSF as follows:

- 13 1. For the removal of all discipline and mention regarding the aforementioned
 investigations and discipline from Claimant's record;
- 14 2. For general damages according to proof;
- 15 3. All costs of this suit;
- 16 4. Pre and post judgment interest;
- 17 5. For punitive damages according to proof;
- 18 6. For all relief available pursuant to the Federal Rail Safety Act, 49 USC §§ 20109 *et*
 19 *seq.*
- 20 7. For attorneys fees according to proof; and
- 21 8. For such other relief as OSHA deems just and proper.

22 DATED: September 5, 2011

HILDEBRAND, McLEOD & NELSON, INC.

23 By: /S/

24 RYAN J. OTIS
 25 Attorney for Claimant
 26 NEIL A. JENSEN
 27
 28

EXHIBIT 2

U.S. DEPARTMENT OF LABOR

Case No. 9-3290-11-073

November 21, 2013

In the Matter of

NEIL A. JENSEN
Complainant

v.

BNSF RAILWAY COMPANY
Respondent

NOTICE OF INTENTION TO FILE ORIGINAL ACTION
IN UNITED STATES DISTRICT COURT

Pursuant to the provisions of the Federal Rail Safety Act, 49 U.S.C. 20109(d)(3), the Complainant hereby gives notice of his intent to file an original action in the United States District Court. The Complainant's FRSA Complaint was filed more than 210 days ago, and as of this date the Secretary of Labor has not issued a final decision.

FOR THE CLAIMANT
NEIL A. JENSEN

BY: 

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CERTIFICATE OF SERVICE

This is to certify that a copy of the foregoing was mailed, postage prepaid, on this

22nd day of November, 2013 to:

Kenneth Atha
Regional Administrator Region 9
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